

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia

APRIL TERM, 1928.

No. 4758.

540

**MUTUAL LIFE INSURANCE COMPANY OF
BALTIMORE, A CORPORATION, PLAINTIFF
IN ERROR,**

vs.

MAURICE I. SCHLEIN.

**IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.**

FILED MAY 1, 1928.

PRINTED JUNE 20, 1928.

Court of Appeals of the District of Columbia

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BALTIMORE, A CORPORATION, PLAINTIFF
IN ERROR,

vs.

MAURICE I. SCHLEIN, DEFENDANT IN ERROR.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
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Court of Appeals of the District of Columbia

No. 4758.

MUTUAL LIFE INSURANCE COMPANY OF BALTIMORE, a
Corporation, Plaintiff in Error,

vs.

MAURICE I. SCHLEIN.

1 Municipal Court of the District of Columbia.

No. 163,140.

MAURICE I. SCHLEIN, Plaintiff,

vs.

MUTUAL LIFE INSURANCE COMPANY OF BALTIMORE, a Body
Corporate.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Municipal Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:

2 *Declaration.*

Filed December 30, 1927.

The plaintiff, Maurice I. Schlein, sues the defendant, Mutual Life Insurance Company of Baltimore, for that heretofore to wit, and during the month of December, 1926, at the District of Columbia, the plaintiff at the special instance and request of the defendant, deposited with the defendant, and the defendant received from the plaintiff, the sum of One hundred dollars (\$100.00) in good and law-

ful money of the United States, under the terms and conditions set forth in a certain written instrument purporting to be an "Agent's Bond", which said written instrument the defendant retained and now has; that all of the conditions of the said written instrument on the part of this plaintiff to be fulfilled have been duly fulfilled by the plaintiff, and the said written instrument has become null and void; that thereupon there became due and owing to the plaintiff from the defendant the sum of One Hundred dollars (\$100.00), and the plaintiff demanded it of the defendant, but the defendant has failed and refused, and still refuses, to pay the said sum of One hundred dollars (\$100.00) to the plaintiff, to the damage of the plaintiff in the sum of One hundred dollars (\$100.00).

Wherefore, the plaintiff brings this suit and claims One hundred dollars (\$100.00), with interest, besides costs.

ABNER SIEGAL,
Attorney for Plaintiff.

Particulars of Demand.

The Mutual Life Insurance Company of Baltimore, Commercial National Bank Building, 14th and G Streets N. W., to Maurice I. Schlein, Dr.

- 3 Deposit made with Mutual Life Insurance Company of Baltimore, in December, 1926, under terms and conditions of "Agent's Bond" executed by the plaintiff at the special instance and request of the defendant; said 'bond' and the conditions thereof having been fully complied with, and it having become null and void \$100.00

Judgment.

March 17, 1928. Min. 32, Page 448.

It appearing under Rule of Court that judgment on the finding in this cause should be entered, it is so ordered. Wherefore, it is considered that the plaintiff recover of the defendant the sum of One Hundred Dollars (\$100.00),

with interest from date, and costs, and have execution thereof.

Order.

April 23, 1928. Min. 34, Page 124.

Come now the parties hereto by their respective attorneys of record, wherefore, the bill of exceptions taken at the trial of this cause is submitted to the Court to be settled.

Further: The Court having this day signed the bill of exceptions taken at the trial of this cause, and heretofore submitted, now hereby orders the same of record nunc pro tunc.

Assignments of Error.

Filed April 23, 1928.

1. The Court erred in holding that, under the provisions of the bond and the contract of employment, it was incumbent upon the defendant to show that the lapse of policies charged against the account of the plaintiff were caused through his fault.

4 2. The Court erred in rendering judgment for the plaintiff.

MINOR, GATLEY & DRURY,
Attorneys for Defendant.

Received copy of the foregoing assignments of error this 10th day of April, 1928.

ABNER SIEGAL,
Attorney for Plaintiff.
C. R.

Designation of Record.

Filed April 23, 1928.

The Clerk will please prepare the transcript of record on appeal in the above case and include therein the following:

1. The declaration and bill of particulars.
2. The Judgment.

3. Order settling bill of exceptions and making same part of the record.

4. The Assisgnments of error.

5. This designation.

MINOR, GATLEY & DRURY,
Attorneys for Defendant.

Service of copy of the above designation of record accepted this 10th day of April, 1928.

ABNER SIEGAL,
Attorney for Plaintiff.
C. R.

5 Filed Apr. 23, 1928. Municipal Court, District of
Columbia.

In the Municipal Court of the District of Columbia.

No. 163,140.

MAURICE I. SCHLEIN, Plaintiff,

vs.

MUTUAL LIFE INSURANCE COMPANY OF BALTIMORE, a
Corporation, Defendant.

Bill of Exceptions.

Be it remembered that on the third day of February, 1928, this cause having come on to be heard before The Honorable James A. Cobb, one of the Judges of the Municipal Court of the District of Columbia, without a jury, the plaintiff appearing by Abner Siegal, Esquire, and the defendant appearing by Messrs. Minor, Gatley & Drury, the following proceedings were had:

The plaintiff, to sustain the issues on his part, offered and introduced evidence, oral and documentary, as follows:

Maurice I. Schlein, being first sworn, testified that he was the plaintiff. He was employed by the defendant Mutual Life Insurance Company of Baltimore, a corporation, in January, 1926, as agent, for the purpose of collecting premiums due the defendant on its policies of in-

surance and selling new policies and reviving lapsed policies. Under the terms of his employment he deposited the sum of \$100., with the defendant Company under the terms and provisions of the following bond:

6 “Know all men by these presents: That I, Maurice I. Schlein, am held and firmly bound unto the Mutual Life Insurance Company of Baltimore, its certain attorney or assigns, in the sum of One Hundred Dollars to which payment, well and truly to be made, I bind myself, and my heirs, executors and administrators, jointly and severally, by these presents.

“Sealed with my seal and dated this 20th day of October, in the year of our Lord one thousand nine hundred and twenty-six.

“Whereas, the said Mutual Life Insurance Company of Baltimore, the obligee herein, has appointed the above bounden Maurice I. Schlein one of its collecting and soliciting agents, to collect money due the said Mutual Life Insurance Company of Baltimore, and to procure applications for all kinds of policies issued by said Company, in accordance with such rules and regulations as may be from time to time made by said Company, or its officers or directors, concerning his said employment and such instructions as he may from time to time receive from his lawful superiors in the said Company's service.

“And whereas, the said Maurice I. Schlein has accepted the said appointment, and has promised and agreed to observe and obey and comply with the said rules, regulations and instructions in all respects, and to fully and faithfully discharge his duties as such collecting and soliciting agent as aforesaid.

“And whereas, it was a condition precedent to the appointment by the said Company of the said Maurice I. Schlein to be such agent as aforesaid that these premises should be executed.

“Now therefore, the condition of this obligation is such, that if the said Maurice I. Schlein do and shall hereafter from time to time and, always, so long as he shall be the agent of the said Company, for the purposes aforesaid, well and faithfully serve the said Company and in all respects discharge the duties of his said position, and com-

ply with the terms of his aforesaid promises and undertakings, and from time to time, and whenever required, make just and true returns to said Company, of all his collections of money, and full accurate reports of all his actions and proceedings as such agent as aforesaid, and if the above named Maurice I. Schlein, his administrators, executors, or personal representatives, shall fully and truly account to and with the said Company, whenever required, for all moneys by him collected, for its use and benefit, and shall indemnify the Company for all losses by lapse of policy or otherwise, for which, under the terms of the rules and regulations governing his employment as said agent as aforesaid, and the instructions to him issued by his lawful superiors in the service of the Company, he, in his life time, or his heirs, executors or personal representatives after his death, shall be responsible, whether said lapses occur during his employment or subsequent thereto, and likewise save harmless and indemnify the said Company for all loss or damage by it suffered through any negligence, breach of duty or other wrongful act or omission on the part of the above bounden Maurice I. Schlein then and in that event this obligation to be void, otherwise to be and remain in full force and virtue in law, it being expressly agreed and understood that said Company may assign said agent to any district, and shall be at liberty to alter and vary the duties and emoluments of the said agent, and grant him indulgence in any form or to any extent,

7 without giving notice to the above obligors or impairing this obligation; it being also further expressly understood and agreed, that in case of suit upon this bond for losses by lapse of policy or otherwise, the written statement of the superintendent or acting superintendent of agents verified from the books of the Company shall be conclusive evidence of said lapses and the parties to this bond hereby waive their right to demand any other or further evidence thereof.

“Witness the hand and seal of the above named obligors, each of whom hereby declares himself of full age, on the day and year as above written.

AGENT'S AGREEMENT

No. 4758 Mutual Life
Insurance Company of
Baltimore & Plaintiff in Error
Maurice J. Schlein
7/12

This Agreement made between the MUTUAL LIFE INSURANCE COMPANY OF BALTIMORE, body corporate of the State of Maryland, hereinafter referred to as the "Company" and Maurice J. Schlein hereinafter referred to as the "Agent."

The Company hereby employs the Agent and the latter hereby accepts the appointment, under the following terms and conditions:

No. 1. The Agent agrees to canvass for insurance and collect premiums every week, regularly, on the Industrial Plan and to solicit applications for life insurance on any other plan adopted by the Company and to put forth his best efforts exclusively in the sale of policies issued by the Company, and generally to devote his entire time and energy to the business of the Company.

No. 2. The Agent agrees to carry out the instructions of the Company as set forth in the Manual of Instructions and Rate Book which are hereby made a part of this Contract as if included herein, and to obey the rules and orders of the Company and its authorized officials and agents.

No. 3. The Agent agrees to keep, hold and properly care for all books, papers and other property of the Company intrusted to him, which shall be at the disposal of and subject to inspection by the Company at all times and under all circumstances, and which he agrees to turn over to the Company or its authorized representative upon demand at the time of his resignation or dismissal; upon refusal or neglect of Agent to deliver his ordinary rate book to Company the latter may charge \$1.50 against any amount due Agent by Company.

No. 4. The Agent agrees that in the event of his resignation or dismissal, he will introduce his successor in the Agency, upon request by the Company, to all the Policyholders in his Agency.

No. 5. The Agent further agrees that in the event he is hereafter employed by the Company under any other appointment, any indebtedness due by him to the Company as shown on the Company's books, shall be charged to him under the new appointment and any indebtedness now existing to the Company shall be charged to his account under this appointment.

No. 6. In consideration of the faithful performance of his duties as set forth in this Agreement to the satisfaction of the accredited representative of the Company, the Agent will be compensated according to the terms given herein and subject to the conditions herein set forth and such other conditions as the Company may hereafter from time to time declare in writing.

AGENT'S TERMS FOR INDUSTRIAL INSURANCE

Salary for Collecting and Maintaining Debit; otherwise known as Debit Salary.

No. 7. A salary of \$15.00 weekly to be paid upon completion of each full week's performance of duties assigned to the Agent and based on \$100.00 of premiums in force as shown by Life Register of Debit assigned to the Agent and to be increased \$.50 weekly beginning with the first week for each \$5.00 unit of premiums in force weekly on his debit in excess of \$100.00.

No. 8. During the first seven (7) weeks' employment and no longer, a minimum salary of \$20.00 per week will be paid, subject to the following conditions:

Should employment cease before the expiration of first thirteen (13) weeks, the difference between the salary stated in the preceding article, and the \$20.00 to be paid weekly for the first seven (7) weeks, shall be considered as advanced commission to be deducted from any unpaid commissions due Agent after employment ceases. Should the employment continue beyond the 13th week, the \$20.00 will be considered a minimum debit salary for the first seven (7) weeks and no longer and thereafter the debit salary will be paid in accordance with article No. 7.

No. 9. It is understood that the weekly debit salary under Article No. 7 of this Agreement, shall be payable only when a full week of faithful performance of duties assigned to the Agent shall have been completed by him to the satisfaction of the accredited representative of the Company, and which shall include systematic calls on all Policyholders whose premiums are collectible and the prompt report for duty at the Company's Office or any other place designated on days and at times set forth for such report of duty, and prompt return of his collections.

No. 10. Should the Agent fail to devote the entire week to the service of the Company, in accordance with the preceding articles and other articles of this Agreement, then he will be paid a debit salary in proportion to the time devoted to the service of the Company.

INDUSTRIAL COMMISSIONS, OTHERWISE KNOWN AS SPECIAL SALARY.

No. 11. (a) Commissions under the Industrial Plan will be paid on the basis of net increase of weekly premiums produced through the efforts of the Agent, and the percentage of collections made during the period as follows:

No. 11. (b) The net weekly increase shall be calculated as follows:

First—credit for premiums on all Policies issued that week upon applications written by the Agent. Second—credit for weekly premiums on all Policies revived to his credit that week and which are not credited to any other Agent under the terms of the other Agent's Agreement; and charged for weekly premiums on all Policies lapsed from his account that week which were in force at the time of accepting the Agency or issued to his account since accepting the Agency, or revived to his account or transferred to his account during his employment, except when lapse is caused by death of the insured, or by maturity of the Policy, or such other lapses as the Agent may be relieved of as described in the Manual of Instructions or Ordinary Rate Book.

No. 11. (c) Commission or special salary to be due and payable weekly for the six weeks period beginning the eighth week from date of this agreement, when the amount of commission due will be determined by the net increase and percentage of collections during the first seven weeks of employment. Each succeeding six weeks will be designated "period of employment."

No. 11. (d) Manner of determining special salary: Amount of net increase made during a period of employment as described in preceding section, is to be divided by the numeral six and multiplied by the number of times shown in the column headed "Percentage of Collections" and opposite the amount of increase made during the period, as per schedule below, and the figure so obtained will be the amount of special salary due the agent for each week of succeeding period of six weeks.

No. 11. (e) Should the charges of weekly premiums on lapsed policies during any period be greater than the credits of weekly premiums on policies issued and revived to the Agent's account, resulting in a decrease for the period, such decrease shall be deducted from any increase made in the future period or periods until the difference shall result in a net increase. No special salary will be paid until the beginning of period succeeding the period in which a net increase is made; it is further agreed that during any period when the judgment of the accredited representative of the Company warrants it, any part of such special salary may be withheld until the end of such period to protect the Company against lapses and decreases occurring during such period.

SCHEDULE TO DETERMINE INDUSTRIAL COMMISSION OR SPECIAL SALARY ACCORDING TO PERCENTAGE OF COLLECTIONS AND AMOUNT OF INCREASE

NET INCREASE FOR PERIOD	PERCENTAGE OF COLLECTIONS FOR PERIOD								
	95	95½	96	96½	97	97½	98	98½	99
\$1.20 or less.....	15	16	17	18	20	20	20	20	20
\$1.20 and less than \$1.50.....	15	16	17	18	20	20	20	20	20
\$1.50 and less than \$1.80.....	15	16	17	18	20	21	22	23	24
\$1.80 and less than \$2.10.....	15	16	17	18	20	22	23	24	25
\$2.10 and less than \$2.40.....	15	16	17	18	21	23	23	25	25
\$2.40 and less than \$2.70.....	15	16	17	19	21	24	25	25	25
\$2.70 and less than \$3.00.....	15	16	17	19	22	25	25	25	25
\$3.00 and less than \$3.30.....	15	16	17	19	22	25	25	25	25
\$3.30 and less than \$3.60.....	15	16	17	19	23	25	25	25	25
\$3.60 and less than \$3.90.....	15	16	17	19	23	25	25	25	25
\$3.90 and less than \$4.20.....	15	16	17	19	24	25	25	25	25
\$4.20 and less than \$4.50.....	15	16	17	20	24	25	25	25	25
\$4.50 and less than \$4.80.....	15	16	17	20	25	25	25	25	25
\$4.80 and less than \$5.10.....	15	16	17	20	25	25	25	25	25
\$5.10 and less than \$5.40.....	15	16	17	20	25	25	25	25	25
\$5.40 and less than \$5.70.....	15	16	17	20	25	25	25	25	25
\$5.70 and less than \$6.00.....	15	16	17	20	25	25	25	25	25

No. 13. The Agent agrees to make returns for all moneys collected by him at the latest on.....of each week, and at the same time, to make full settlement for collections with the Assistant Superintendent or other person appointed for that purpose.

No. 14. The Agent agrees to make out and report to the Company on.....of each week a list of all policies in his account on which four (4) weeks' premiums are due and unpaid and agrees further that upon his failure to do so, he shall be held liable to the Company for all premiums due for more than four (4) weeks.

No. 15. It being also further expressly understood and agreed that in case of any suit upon this Agreement, the written Statement of the Superintendent or Acting Superintendent of Agents, verified from the books of the Company shall be conclusive evidence of all lapses and other indebtedness of the Agent to the Company and the parties hereto waive their right to demand any other or further evidence thereof.

No. 16. (a) After the Agent's retirement whether by resignation or dismissal, all commissions due and not paid to the Agent earned during the period previous to the period in which his retirement occurs, and commissions earned during the period in which his retirement occurs, which shall be determined by net increase made, multiplied by the times shown in column under percentage of collections in the final period, shall be held by the Company for six (6) weeks after the Agent's retirement or for such a time required to have 26 weeks premiums collected on policies issued upon members of Agent's family.

No. 16. (b) Within the time of with-holding commissions due Agent as provided in preceding section premiums on policies issued upon applications written by him, will be credited to him and premiums on policies revived to his account within 2 weeks after his retirement, provided the lapse of policies revived was charged to his account, will be credited to him. Premiums on policies reported for lapse from his account within 2 weeks after his retirement will be charged to his account and business lapsed with less than 26 weeks of premiums paid on members of Agent's family will be charged to his account. The above credits and charges will be made at number of times to be determined by increase and percentage of collections in the final period of employment, as set forth in "Section" 16 (a).

No. 16. (c) Should charge for the lapse resulting during the period following the severance of connection with the Company exceed the commission due, the Agent and his bond will be liable for such excess less any amount due or to become due said Agent on Ordinary business which shall be applied toward liquidation of such indebtedness.

No. 17. The Company agrees, subject to the provisions of this contract, to allow the Agent commissions upon premiums on Ordinary Policies issued by the Company upon applications secured by the Agent, in accordance with the following schedule:

SCHEDULE OF COMMISSIONS ON ORDINARY BUSINESS

KIND OF POLICY	PERCENTAGE OF PREMIUMS			
	FIRST POLICY YEAR	SECOND POLICY YEAR	THIRD POLICY YEAR	FOURTH POLICY YEAR
Ordinary Life.....	50	5	5	5
Ten Payment Life.....	35	3	3	3
Fifteen Payment Life.....	45	4	4	4
Twenty Payment Life.....	50	5	5	5
Thirty Payment Life.....	50	5	5	5
20 Payment 30 Year Endowment.....	45	5	5	5
Fifteen Year Endowment.....	35	4	4	4
Twenty Year Endowment.....	40	5	5	5
Endowment Age 65 (Age 16—45).....	50	5	5	5
Endowment Age 65 (Age 46—55).....	40	5	5	5
Child's Educational (5 to 14 Yrs. Endowment).....	35	4	4	4
Child's Educational (15 to 21 Yrs. Endowment).....	40	5	5	5
Ten Year Term.....	20	3	3	3
Joint Life (Ordinary).....	50	5	5	5
Joint Life (20 Payment Life).....	50	5	5	5

Limited Payment Convertible (Age 16—44).....	40	5	5	5
Limited Payment Convertible (Age 45—55).....	35	4	4	4

INTERMEDIATE POLICIES

Ordinary Life.....	50	5	5	5
Twenty Payment Life.....	45	5	5	5
20 Payment 30 Year Endowment.....	40	5	5	5
Twenty Year Endowment.....	40	5	5	5

No. 18. The Ordinary Commissions due the Agent as per the Schedule above, shall be due and payable to him as soon as the premiums shall have been received by the Company and the Policies issued and delivered, except when policies are issued on quarterly premium basis, in which event, unless such quarterly premium amounts to six (6) dollars or more, no commission will be paid until the second quarterly premium is received by the Company, when the commission for both quarters will be paid.

No. 19. It is understood and agreed that the Agent shall not be entitled to receive any salary, compensation, commissions or remuneration of any kind from the Company except in accordance with the terms of this Agreement, after the date of termination of his employment with the Company, whether the said termination is due to the resignation of the Agent or his dismissal by the Company, or for any other reason whatever, provided that the Company shall pay the Agent all first year commissions upon premiums upon Ordinary Life Insurance business which the Agent may write and be accepted by the Company while in the employ of the Company, after such premiums shall have been paid to the Company subject to provisions of Section No. 16 (c) and upon following conditions: (a) On all business written by Agent but placed by another agent and on all collections of first year premiums made by another agent on retiring agent's business, after termination of this contract, the Agent placing said business or collecting the premium, as the case may be, shall receive one-half the commission and the retiring agent the other one-half; (b) Any portion of first year's commission which might have accrued to an agent leaving the Company on business placed previously by him but lapsed after his retirement and revived by another agent shall be paid to the latter; (c) The agent who places the insurance or collects the premium under provision (a) and the one reviving under provision (b) shall be entitled to all renewal commissions to which the retiring agent would have been entitled had he remained with the Company.

No. 20. This Agreement may be terminated at any time by the Company whenever in its judgment, the same becomes necessary.

No. 21. The Agent agrees to furnish to the Company, a bond for the faithful performance of his duties under this agreement, in such amount and with such surety as may be required by the Company and will renew the same, or furnish additional bond when demanded by the Company.

Dated, at Jack Se., this 18, day of January, 1926.

MUTUAL LIFE INSURANCE COMPANY OF BALTIMORE

By J. Lane

Maurice J. Schleis
Signature of Agent.

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Signed, Sealed and Delivered in the presence of:

(Signed) M. I. SCHLEIN. (SEAL.)”

(Signed) H. M. SUNYAK,
Witness.

(Signed) R. O. WEHRHEIM,
Witness.

The plaintiff remained in the employ of the defendant Company about fifteen months and left its employ on February 19, 1927. When he left the employ of the defendant Company he demanded the return of the cash bond of One Hundred Dollars (\$100) previously deposited by him and the Company refused to return the money or any portion of it.

On cross-examination the plaintiff identified the contract of employment which was signed by him at the time he entered the service of the defendant Company.

Thereupon the plaintiff rested his case.

Thereupon the defendant, to sustain the issues on its part, offered and introduced evidence as follows:

The defendant offered and there was received in evidence, the contract of employment entered into between the plaintiff and the defendant Company which was in the words and figures following:

(Here follow diagrams marked pages 7½ and 7¾.)

8 Thereupon the defendant to further maintain the issues on its part offered in evidence, under the provisions of the bond and the contract of employment, a written statement of the superintendent of agents of the defendant Company, prepared under his supervision, and verified from the books of the Company, showing a true and accurate statement between the plaintiff and defendant as recorded on the books of said Company of all lapses and other indebtedness of the plaintiff to the defendant, and the same was received in evidence by the Court, and was in the words and figures following:

“In the matter of
Ex-Agent MAURICE I. SCHLEIN

VS.

MUTUAL LIFE INSURANCE COMPANY OF BALTIMORE

“It is hereby certified that on this 30th day of January, Nineteen hundred and twenty-eight, before me, a Notary Public of the State of Maryland, duly commissioned and qualified and residing in the City of Baltimore, personally appeared Charles G. Ewell, who being first duly sworn depose and sayeth as follows:

“That he is the Superintendent of Agents of the Mutual Life Insurance Company of Baltimore, and that the attached account of said Company with Maurice I. Schlein was prepared under his supervision and verified from the books of the Company, and that the same is a true and accurate statement between the said Insurance Company and the said Maurice I. Schlein as recorded on the books of said Company.

(Signed)

CHAS. C. EWELL.

“Subscribed and sworn to before me this 30th day of January, Nineteen hundred and twenty-eight.

(Signed)

EMILY T. CROWLEY,
Notary Public.”

[NOTARIAL SEAL.]

To which said certificate was attached the following statement:

(Front.)

“Mutual Life Insurance Company of Baltimore.

Final Statement of Agent's Salary Account.

Agent's Name: Maurice Schlein.

D. L. P. Feb. 19, 1927.

9 Debit: No. 1312. District: Washington. Staff: F.

Charge.		Credit.	
Special salary paid to agent	\$110.00	Commission due agent for	
Lapse \$8.57 (at 15 times) ..	128.55	prior period \$10.24 x 15.	
Lapse by others (at 15		Commissions due agent on	
times) \$12.33.....	184.95	issue for present period,	
Miscellaneous:		\$1.15 x 15.....	\$153.60
Bal. due from prev.		Commissions due agent on	
acc.	560.74	revivals for present	
Balance due agent....		period	17.25
		Debit salary due agent.....	
Total	\$984.24	Miscellaneous:	
		Cash Bond....	\$100.00
		Deficiency	10.32
			<u>\$89.68</u> 89.68
		Balance due Company.....	723.71
		Total	<u>\$984.24</u>

Received of the Mutual Life Insurance Company of Baltimore — Dollars in full for commissions and debit salary due me up to the present date. Hereby admitting the correctness of the above as a true statement of my account in accordance with my agreement with the Company.

Agent: — — —.

Witness:

Date: — — —, — — —.
— — —.

(Back.)

	Issue.	Rev.	Lapse.	Lapse by others.
12/11/26	1.20	....	....	2.23
18	1.13	....	.98	1.80
25	.32	.75	.44	.56
1/ 1/27	.74	....	.15	....
8	.50	....	.28	1.32
15	.80	....	....	.50
22	1.64	.40	.57	.40
29	1.57	....	1.15	.83
2/ 5	1.55	....	1.05	....
12 .....	....	....	.98	.90
19	.63	....	.96	....
26	.16	....	2.01	.93
3/ 5 .....	....	....	....	.76
12 .....	....	....	....	2.10
	10.24	1.15	8.57	12.33

10 Credit Cash Bond, \$89.68.”

Thereupon the defendant rested.

Whereupon the plaintiff Maurice I. Schlein was recalled and testified that he had done nothing to cause the lapse of any policy of insurance; that while he was employed by the defendant Company he performed every service required of him; and that when he left the employ of the defendant there was no money then due the Company under the terms of his employment.

Thereafter the Court found as follows:

“The Court is of the opinion that it is incumbent upon the defendant to show that the lapses claimed by the defendant in this case were caused by the fault of the plaintiff. In the absence of the defendant Company coming forward and showing by responsible proof that the plaintiff was responsible for the lapse of policies under the rules governing his employment, the finding of the Court will be in favor of the plaintiff in the sum of \$100.”

And thereafter on the 12th day of March, 1928, the Court entered a finding in favor of the plaintiff for the amount sued for, to which finding the defendant duly excepted.

Judgment was entered on said finding for the plaintiff against the defendant for the full amount sued for to the entry of which judgment the defendant duly objected and excepted, and thereafter, pursuant to notice, said defendant applied to the Court of Appeals of the District of Columbia for a writ of error, which said writ of error was allowed on April 2, 1928.

Be it further remembered that the exceptions taken by counsel for the defendant to the ruling of the Court and of its decision upon the whole evidence, the substance of which evidence is included in this bill of exceptions, were then and there separately taken and noted in the minutes of the Judge presiding.

And thereupon, after the foregoing proceedings, which are hereby made a part hereof, the defendant by its counsel tendered its bill of exceptions and prayed the
11 Court to sign, seal and make the same a part of this record, and to have the same force and effect as to each and every of the exceptions taken by the defendant and noted by the Court, as aforesaid, as if the same had been set forth in a separate bill of exceptions signed and sealed by the Justice presiding at the trial, which is accordingly done, now for them, this 23d day of April, 1928.

JAMES A. COBB,

*Judge of the Municipal Court of
the District of Columbia.*

Abner Siegal, Esq.,
Attorney for plaintiff:

SIR:

Please take notice that the foregoing bill of exceptions will be presented to Judge James A. Cobb, one of the Judges of the Municipal Court, for settlement on April 23, 1928, at ten o'clock A. M.

MINOR, GATLEY & DRURY,
Attorneys for Defendant.

Service of copy of the foregoing Bill of Exceptions and notice acknowledged this 10th day of April, 1928.

ABNER SIEGAL,
Attorney for Plaintiff.
C. R.

12 Filed Apr. 3, 1928. Municipal Court, District of
Columbia.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable James
A. Cobb, Judge of the Municipal Court of the District
of Columbia, Greeting:

Because in the record and proceedings, as also in the
rendition of the judgment of a plea which is in the said
Municipal Court, before you, between Maurice I. Schlein,
Plaintiff, and Mutual Life Insurance Company of Balti-
more, a corporation, Defendant, No. 163,140, a manifest
error hath happened, to the great damage of the said De-
fendant, as by its complaint appears. We being willing
that error, if any hath been, should be duly corrected, and
full and speedy justice done to the parties aforesaid in
this behalf, do command you, if judgment be therein given,
that then, under your seal, distinctly and openly, you send
the record and proceedings aforesaid, with all things con-
cerning the same, to the Court of Appeals of the District of
Columbia, together with this writ, so that you have the same
in the said Court of Appeals, at Washington, within 20
days from the settling of the bill of exceptions, or within
such additional time after the expiration of the 20 days
as the court below or a judge thereof for sufficient cause
shall allow; that the record and proceedings aforesaid being
inspected, the said Court of Appeals may cause further to
be done therein to correct that error, what of right and ac-
cording to the laws and customs of the United States should
be done.

Witness the Honorable George E. Martin, Chief Justice
of the said Court of Appeals, the 2nd day of April, in the
year of our Lord one thousand nine hundred and twenty-
eight.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

Allowed by

JOSIAH A. VAN ORSDEL,

*Associate Justice of the Court of
Appeals of the District of Columbia.*

[Endorsed:] Filed Apr. 3, 1928. Municipal Court, District of Columbia.

13 Municipal Court of the District of Columbia.

UNITED STATES OF AMERICA,

District of Columbia, ss:

I, Blanche Neff, Clerk of the Municipal Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 13, both inclusive, to be a true and correct transcript of the record, according to direction of counsel herein filed, copy of which is made part of this transcript, in Cause, At Law, No. 163140, wherein Maurice I. Schlein, is plaintiff, and Mutual Life Insurance Company of Baltimore, a corporation, is defendant, as the same that remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 1st day of May, 1928.

[Seal Municipal Court of the District of Columbia.]

BLANCHE NEFF,

Clerk.

Endorsed on cover: District of Columbia Municipal Court. No. 4758. Mutual Life Insurance Company of Baltimore, a corporation, plaintiff in error, vs. Maurice I. Schlein. Court of Appeals, District of Columbia. Filed May 1, 1928. Henry W. Hodges, Clerk.